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**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

12 Colony Insurance Company, a foreign Case No. 2:18-cv-01950-JCM-NJK
13 insurance company;

14 Plaintiff,
v.

15 Juan M. Sanchez, an individual; Allen
16 Crumpler, dba Ace Demolition; and Kathi
Crumpler,

Defendants.

**PLAINTIFF COLONY INSURANCE
COMPANY'S RESPONSE TO
DEFENDANT SANCHEZ'S FIRST
MOTION TO COMPEL**

ORAL ARGUMENT REQUESTED

Plaintiff Colony Insurance Company, by and through its undersigned counsel,
hereby responds to Defendant Juan Sanchez's First Motion to Compel. Sanchez seeks to
depouse certain representatives from Colony and obtain certain documents related to the
topics enumerated in the Rule 30(b)(6) Notice of Deposition. As set forth below, the
information sought by Sanchez is not relevant to the purely legal issues in this matter.
Moreover, even assuming Sanchez has some basis for seeking discovery from Colony, the
information as set forth in the Rule 30(b)(6) Notice of Deposition far exceeds any relevant
or permissible discovery and is unduly burdensome. As a result, Colony respectfully
requests that this Court quash the Rule 30(b)(6) Notice of Deposition or, in the alternative,
limit the scope of allowable discovery. This Response is supported by the following

1 Memorandum of Points and Authorities and the entire record in this action.

2 **MEMORANDUM OF POINTS AND AUTHORITIES**

3 **A. Factual Background.**

4 As set forth in the First Motion to Compel, this matter stems from a work-related
 5 injury to Sanchez. It occurred on April 21, 2016, while Sanchez was working for Ace
 6 Demolition, the company owned by Allen Crumpler. Sanchez was working for Crumpler
 7 at a demolition project when he fell off some scaffolding, hitting the ground below and
 8 suffering a head injury. (ECF No. 42, p. 7) Crumpler provided workers' compensation
 9 insurance to his employees through Travelers Insurance. Travelers investigated the
 10 workers' compensation claim and initially denied it. (Id.) Subsequently, Travelers
 11 reversed its decision and accepted the claim. (Id.)

12 Sanchez then filed suit against Crumpler in Clark County District Court, alleging
 13 that Crumpler made misrepresentations to Travelers in the course of Travelers'
 14 investigation of the workers' compensation claim, causing Travelers to delay the
 15 acceptance of the workers' compensation claim. (Id. at p. 8) The Complaint in *Sanchez v.*
 16 *Crumpler et al.* (the State Court Action) includes claims of negligence, negligent
 17 misrepresentation, fraudulent misrepresentation, and intentional interference with
 18 contract. (Id.)

19 Colony issued a general liability Policy to Crumpler, in effect at the time of
 20 Sanchez's accident (the Policy). The Policy provides liability coverage for "bodily injury"
 21 or "property damage" caused by an "occurrence." (See ECF No. 1, p. 3; see also ECF 42-
 22 3). It excludes coverage for "expected or intended injury." (Id.) It also excludes coverage
 23 for "bodily injury" to an employee "arising directly or indirectly" out of employment by
 24 the insured or out of performing duties related to the insured's business. (Id.) As a result
 25 of these Policy provisions, Colony is participating in the defense of the insureds in the
 26 State Court Action under a reservation of rights. Colony filed this declaratory action in
 27 order to determine whether it has any duty to defend or indemnify the insureds with
 28 respect to the claims in the State Court Action. (ECF No. 1.)

1 Sanchez now seeks to obtain both testimony and documents from Colony as
 2 outlined in the Rule 30(b)(6) Notice of Deposition. Notably, Sanchez initially submitted a
 3 Rule 30(b)(6) Notice of Deposition unilaterally setting a deposition date for
 4 approximately two (2) weeks away, without notice, and seeking discovery into a number
 5 of items clearly not relevant to the claims in this case. After a meet and confer, counsel
 6 agreed some of the included categories were improper and amended the Notice. In the
 7 amended Notice, Sanchez still includes ten different categories of information and seeks
 8 to obtain this testimony in the next ten days. (ECF No. 42-3).

9 The Notice of Deposition, as written, would likely require more than one
 10 representative of Colony to review, research, and gather documents and travel from
 11 Colony's principal place of business to the State of Nevada. No written discovery has yet
 12 been done in order to streamline any of these areas of testimony and/or to determine
 13 whether such documentation exists. As discussed in more detail below, much of the
 14 information sought by Sanchez is not relevant to the very straightforward legal questions
 15 and coverage issues raised in this matter and, in addition, much of it can be obtained
 16 through other, less burdensome means.

17 **B. Scope of Discovery.**

18 Generally speaking, courts have broad discretionary power to allow or deny
 19 discovery. *See, e.g., Little v. City of Seattle*, 863 F.2d 681 (9th Cir. 1988). Under Federal
 20 Rule of Civil Procedure 26(1), the parties may obtain discovery regarding any matter (not
 21 privileged) as long as it is relevant to the claim or defense of a party and is reasonably
 22 calculated to lead to the discovery of admissible evidence. While the test of relevancy
 23 under Rule 26(b)(1) is relatively broad, a court may also preclude or limit discovery on
 24 the grounds that the burden or expense of the proposed discovery outweighs its likely
 25 benefit. *See e.g., EEOC v. Caesars Entm't, Inc.*, 237 F.R.D. 428, 431-432 (D. Nev. 2006).

26 In *Roberts v. Clark County School District*, 312 F.R.D. 594, 601-04 (D. Nev.
 27 2016), the court discussed the role of trial courts to exercise their broad discretion to limit
 28 and tailor discovery to accomplish the goal of the Rules in securing a "just, speedy, and

1 inexpensive determination of every action and proceeding.” *Id.* at 602. The court noted as
 2 follows:

3 The 2015 amendments to Rule 26(b)(1) emphasize the need to impose “reasonable
 4 limits on discovery through increased reliance on the common-sense concept of
 5 proportionality.” The fundamental principle of amended Rule 26(b)(1) is “that
 6 lawyers must size and shape their discovery requests to the requisites of a case.”
 The pretrial process must provide parties with efficient access to what is needed to
 prove a claim or defense but eliminate unnecessary and wasteful discovery.

7 *Id.* at 603. If a Court determines that the discovery sought is unreasonably cumulative or
 8 duplicative, *or it can be obtained from some other source that is more convenient, less*
9 burdensome, or less expensive, the Court can limit the extent of such discovery. *See also*
 10 *Bank of Am., N.A. v. SFR Inv. Pool I, LLC*, 2016 WL 2843802 at p. 3 (D. Nev. 2016). The
 11 Court in *Bank of America* also noted that, in some instances, a court can require a party to
 12 serve interrogatories in lieu of a Rule 30(b)(6) deposition, particularly when a party is
 13 seeking the factual and legal basis for the claims and/or when information can reasonably
 14 be obtained through written discovery. *Id.*

15 This case is a declaratory action pertaining to insurance coverage for a particular
 16 claim. The interpretation of a policy provision is typically a question of law for the court
 17 to decide. *See e.g., Capitol Indem. Corp. v. Blazer*, 51 F.Supp.2d 1080 (D. Nev. 1999).
 18 Whether an ambiguity exists is also a question for the court. *Id.* In this case, there has
 19 been no determination that the Policy language is ambiguous nor have there been any
 20 allegations that the Policy is ambiguous. Sanchez cannot simply claim ambiguity in a
 21 motion to compel in order to conduct discovery. Moreover, most of the information
 22 sought by Sanchez in the Notice of Deposition pertains to claims handling issues, which
 23 are indisputably not the subject of this action. There is no claim for or allegation of
 24 improper claim handling on the part of Colony in this case. This case simply asks the
 25 Court to apply the Policy provisions at issue apply to the undisputed facts of this case.

26 Further, even if some limited discovery is permissible, the Notice of Deposition is
 27 far too broad and unduly burdensome and seeks information well beyond the allowable
 28 parameters of discovery in an action such as this, in which the sole claim is for

1 declaratory relief to determine whether the Colony Policy provides coverage for the
2 claims in the underlying State Court Action. In addition, much of this discovery is
3 duplicative and can be obtained by less burdensome means, such as a written set of
4 discovery requests to determine whether these documents and information even exist
5 prior to requiring a representative (or more than one representative) from Colony to travel
6 to Nevada for a 30(b)(6) deposition.

7 **C. The Notice of Deposition.**

8 The Notice of Deposition, as amended, includes ten different categories of
9 information and asks Colony not only to produce a representative to testify on each of
10 these issues, but to review and produce all documents pertaining to each of these issues.
11 Each of these categories is discussed below.

12 1. *The policies and procedures used by Colony to evaluate the basis, facts and*
13 *information surrounding the underlying liability claim for damage by Juan*
14 *Sanchez and whether such claims are covered by the Colony policy.*

15 The first request seeks information regarding the manner in which Colony handled
16 this particular claim, i.e., its internal claim handling policies and procedures, whether
17 those policies and procedures were followed, and how they were followed in this instance
18 and how coverage was determined. Sanchez claims this request is relevant to determine
19 whether Colony has specific guidelines or procedures in place for evaluating claims such
20 as this. However, whether Colony has internal policies and procedures, and whether they
21 were followed in this case, does not affect the Court's application of the Policy
22 provisions to the facts of this case and have no bearing on determining whether this claim
23 is covered. This claim involves only the application of certain Policy provisions to the
24 facts of the underlying case; it does not involve a review or analysis of Colony's policies
25 and procedures and how the claim was handled. This category of information is not
26 relevant. Colony's policies and procedures are also confidential, proprietary business
27 information and documents that have nothing to do with the purely legal issues raised in
28 this case.

2. The actual investigation of the facts supporting exclusion of the liability claims by Juan Sanchez, the findings and conclusion of the investigation, and the response, if any, by management at Colony to the findings and conclusions.

Sanchez asserts that it is necessary to determine what investigation Colony did and whether it was “sufficient.” Sanchez also claims that if there was an “insufficient investigation,” that is “important information.” He does not explain why this is important information, most likely because Sanchez knows it is not relevant. This request essentially seeks to establish whether Colony performed an adequate investigation before making its coverage determination, which, again, is pertinent only to the claims handling aspect. Whether or not Colony performed what Sanchez believes is a “sufficient investigation” has no bearing on the Court’s application of the Policy provisions apply to the underlying facts as a matter of law. The facts themselves are in the underlying case. The parties can present those facts to this Court so that the Court can review the Policy provisions in connection with the known facts and decide whether there is coverage for the claims as a matter of law. Colony’s investigation has no bearing on the facts from the underlying case or this Court’s application of the Policy provisions to those facts.

3. Correspondence, emails, conversations, writings or other communications between Allen Crumpler and Colony regarding what acts of the insured are specifically excluded in the Colony Policy.

This request is vague as to what Sanchez is seeking. The Colony Policy itself determines what is and is not covered. Correspondence between Colony and the insured does not alter the terms of the Policy. *See, e.g., Cinelli v. Sec. Pac. Corp.*, 61 F.3d 1437 (9th Cir. 1995)(extrinsic evidence cannot alter the terms of a policy). In addition, Sanchez argues that correspondence between Colony and the insured would somehow determine what type of conduct would “reasonably be considered covered” under the Policy. This is essentially tantamount to a “reasonable expectations” argument, i.e., a request for certain information in order to determine what the insured was told and what the insured reasonably expected to be covered under the Policy. There is no claim or argument of “reasonable expectations” by the insured, in this case Crumpler). Since “reasonable

1 expectations" are not an issue here, such information is irrelevant.

2 4. *The factual and legal basis for the denial of liability coverage as set forth in*
 3 *Colony's complaint for declaratory relief, including the coverage letters of*
 4 *in-house or outside counsel, the language of the subject policy, the language*
of any applicable riders and who, or which group of people, specifically
directed the denial of coverage.

5 Sanchez is essentially asking for Colony to explain the basis for the application of
 6 its Policy and why Colony informed Crumpler that coverage was not available for this
 7 claim. Policy interpretation is a question of law for the Court. Colony's testimony as to
 8 how the Policy should be interpreted is simply not relevant to this Court's decision
 9 interpreting the Policy as a matter of law. Even if it was relevant, the basis for Colony's
 10 decision to defend the insured under a reservation of rights has already been explained in
 11 its coverage letter to Crumpler and the pleading in this lawsuit. The purpose of this action
 12 is to ask the Court to decide how the Policy applies to the facts of this case.

13 Moreover, to the extent Sanchez is seeking an explanation as to the entire factual
 14 and legal basis for its coverage position, that is more appropriately sought through written
 15 interrogatories. *See, e.g., Bank of America, supra* at p. 4 (noting that since an "adequate
 16 response" to such a request would require "substantial input and preparation by Plaintiff's
 17 counsel in assembling and organizing the facts that support each of the legal conclusions
 18 identified in those topics," such information could be "provided more efficiently and
 19 fairly through answers to interrogatories"); *see also HSBC Bank USA, N.A. v. Green*
20 Valley Pecos Homeowners Association, Inc., 2016 WL 6915301 (D. Nev. 2016)(noting
 21 that where the deposition topic is more appropriately addressed by interrogatory, it is
 22 more appropriate to treat the topic as an interrogatory and require the responding party to
 23 provide a written answer to it instead). In this case, Sanchez has not submitted any written
 24 discovery requests. A detailed explanation of Colony's coverage position has already been
 25 provided, but to the extent it is appropriate at all to inquire further, that can be
 26 accomplished through written discovery requests rather than requiring one or more
 27 representatives to travel to Nevada for a deposition. Finally, this request seeks
 28 information that is privileged to the extent it includes conversations with and coverage

1 advice from Colony's attorneys.

2 5. *The evaluation of the language of the subject policy that was used by*
 3 *Colony adjusters and supervisors regarding what acts the Policy covers,*
 4 *specifically what types of acts are excluded and the limits, if any, of acts of*
negligence of the named insured that are covered.

5 As set forth above, Colony's interpretation of and specific application of the Policy
 6 is not determinative in this action. It is the Court's role to interpret the Policy and
 7 determine how it applies to the facts of this case. Moreover, Colony has already explained
 8 why the Policy does not provide coverage for this claim, and, as discussed above, that
 9 information can be properly communicated through less burdensome means in the form of
 10 written discovery.

11 6. *The review by management persons at Colony of the evaluation, handling*
and decision by Colony adjusters to deny coverage.

12 Sanchez seeks discovery to determine "if upper level review occurred" and if any
 13 coverage determinations "were ratified and/or approved by management." Sanchez does
 14 not explain how or why this is relevant to the issue of how the Court will interpret and
 15 apply the Policy provisions to the facts of this case. Sanchez already is in possession of
 16 both the Policy itself and the coverage letters from Colony, so Sanchez is aware of
 17 Colony's coverage position. Whether a claim decision or coverage position was reviewed
 18 or approved by "management" is not relevant to whether the Policy provides coverage for
 19 this claim. It appears what Sanchez is actually seeking is information regarding the
 20 handling of the claim itself, which again is not an issue in this case and is irrelevant.

21 7. *All claims of a similar nature from April 2014 to the present, where the*
claim was that the Colony insured made negligent statements that affected
other unrelated insurance to another person.

22 Sanchez claims that the application of the Policy in other similar claims would be
 23 relevant to its interpretation here. The handling of other claims is not relevant to the
 24 determination of coverage for this claim. Additionally, the request is vague and overly
 25 broad in that it is not limited to claim type, coverage type, geography, etc. such that
 26 Colony could even begin to understand what information Sanchez is seeking. The task of
 27
 28

1 searching all of Colony's claim files for "claims of a similar nature" (whatever that
 2 means) would be so burdensome that the cost would substantially outweigh the needs of
 3 this case, which is a purely legal coverage issue.

4 8. *Communications between Colony and Travelers regarding the claims of*
 5 *Juan Sanchez against Allen Crumpler, Travelers or any other party.*

6 Sanchez arguably seeks communications between Colony and Travelers to
 7 determine what facts were provided to Colony in order to make its coverage
 8 determination. Such communications, however, are not relevant to this Court's
 9 determination of coverage under the Policy. The Court determines coverage as a matter of
 10 law by comparing the facts available in the State Court Action and the facts as presented
 11 to this Court to the relevant Policy provisions. Which of those facts were reviewed by
 12 Colony at the time of its coverage determination is not relevant to this Court's coverage
 13 determination. In addition, the reservation of rights letters to Colony's insured provides
 14 the information requested. To the extent any of this information is relevant and not
 15 contained in the coverage position letters, such information can be easily obtained through
 16 written discovery in a more efficient, and less burdensome, manner.

17 9. *Communication between Crumpler and Colony at any time regarding the*
 18 *application, underwriting, placement, adjustment and/or denial of benefits*
 19 *for the subject policy.*

20 Sanchez seeks information regarding whether there has been an "explanation or
 21 coverage assessment conveyed to Crumpler," Colony's insured, with regard to Colony's
 22 coverage position in this matter. This information simply is not relevant to the legal
 23 question of coverage under the policy. Again, to the extent such information is relevant
 24 (and to the extent it has not already been produced in this case), it can be obtained through
 25 written discovery requests in a less burdensome manner.

26 10. *Any riders and/or addendums to the policy regarding any exclusions to the*
 27 *policy that influenced or affected the denial by Colony of liability coverage.*

28 This request is vague and unintelligible. Colony has already provided its coverage
 29 position and explained what Policy provisions apply to this claim. It is the role of the
 30 Court to review the facts and Policy provisions (or the Policy as a whole) and determine

1 as a matter of law whether there is coverage for this claim.

2 **D. Conclusion**

3 Sanchez is seeking discovery on numerous topics that are not relevant to the very
4 limited issue in this case – i.e., whether there is coverage for the claims asserted in the
5 State Court Action. Colony filed this declaratory action seeking a determination of how
6 and whether its Policy applies to these claims. Coverage is a question of law for the
7 Court, decided by applying the Policy to the facts of the underlying case. Nothing about
8 how Colony handled the claim or Colony's interpretation of its policy is relevant to the
9 Court's inquiry and ultimate decision. Moreover, Sanchez is requesting that one or more
10 representatives from Colony travel to the state of Nevada for a deposition, on short notice,
11 when most of this information, to the extent it is even relevant and discoverable, has either
12 already been provided to Sanchez or can be more efficiently obtained through the use of
13 written discovery. Colony therefore requests that this Court quash the Notice of 30(b)(6)
14 Deposition.

15 DATED May 14, 2019.

16 BARRETT & MATURA, P.C.

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CERTIFICATE OF SERVICE

I hereby certify that on May 14, 2019, I electronically transmitted the foregoing document to the Clerk's Office using the CM/ECF system for filing and transmittal of Notice of Electronic filing to the following CM/ECF registrants:

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